

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO.: 8:03-CR-77-T-30-TBM

SAMI AMIN AL-ARIAN,  
SAMEEH TAHA HAMMOUDEH,  
GHASSAN ZAYED BALLUT,  
HATEM NAJI FARIZ

**UNITED STATES' RESPONSE IN OPPOSITION  
TO DEFENDANT HATEM NAJI FARIZ'S RENEWED MOTION  
FOR DISCLOSURE OF MATERIALS RELATED TO SURVEILLANCE,  
SPECIFICALLY SURVEILLANCE OF ELECTRONIC MAIL COMMUNICATIONS,  
PURSUANT TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT ("FISA"),  
AND FOR SUPPRESSION OF THE FRUITS OF ALL SURVEILLANCE  
CONDUCTED UNDER FISA AND MEMORANDUM OF LAW IN SUPPORT**

The United States of America by Paul I. Perez, United States Attorney, Middle District of Florida, respectfully submits the following response in opposition to Defendant Hatem Naji Fariz's Renewed Motion for Disclosure of Materials Related to Surveillance, Specifically Surveillance of Electronic Mail Communications, Pursuant to the Foreign Intelligence Surveillance Act ("FISA"), and for Suppression of the Fruits of All Surveillance Conducted Under FISA and Memorandum of Law in Support (Doc. 1361).

Defendant Fariz has apparently filed the instant motion in response to the Court's ruling on September 22, 2005 that Government Exhibit 1210A is admissible at trial. Government Exhibit 1210A is an e-mail communication that was received by defendant Fariz at [abuobaidah@hotmail.com](mailto:abuobaidah@hotmail.com) and intercepted through electronic surveillance authorized by the Foreign Intelligence Surveillance Court ("FISC") on November 10, 2002. See Exhibit A (copy of Government Exhibit 1210A). In this motion, defendant

Fariz primarily seeks to relitigate issues that this Court has already decided. To the extent that he raises any new arguments specifically targeting Government Exhibit 1210A, those claims also fail for the reasons that follow. Accordingly, the Court should deny defendant Fariz's motion in its entirety as meritless.

## **ARGUMENT**

### **I. The Court Should Not Reconsider Its Prior Order.**

In large part, defendant Fariz simply reasserts the arguments raised in his previous motions seeking disclosure of FISA materials and suppression of FISA electronic surveillance (Docs. 798, 860, 927). On April 19, 2005, following exhaustive briefing and argument, the Court denied defendant Fariz's motions, determining that: (1) FISA's procedures and provisions are constitutional; (2) none of the FISA applications, orders and related materials should be disclosed; (3) the FISA electronic surveillance targeting defendant Fariz was lawfully authorized; and (4) such FISA electronic surveillance was lawfully conducted. See Doc. 968. In his instant motion, defendant Fariz presents no arguments that would justify reconsideration of the Court's order. Thus, his motion should be denied for the reasons stated in the United States' written and oral responses to such motions (Docs. 844, 845), which we hereby incorporate by reference, and for the reasons stated in the Court's Order denying such motions.

## **II. There Is No Basis For Suppression of Government Exhibit 1210A.**

To the extent that defendant Fariz seeks suppression specifically of Government Exhibit 1210A, his motion should be rejected. Since the Court previously held that the FISA applications established probable cause to believe that defendant Fariz was an agent of a foreign power, the only other legal issues that could arise specifically with respect to the lawfulness of the interception of Government Exhibit 1210A are: (1) whether the FISC had authorized electronic surveillance of [abuobaidah@hotmail.com](mailto:abuobaidah@hotmail.com) at the time when Government Exhibit 1210A was intercepted; and (2) whether the pertinent FISA application established probable cause to believe that such e-mail address was being used, or was about to be used, by defendant Fariz. Defendant Fariz presents no argument or facts regarding these issues and, as explained below, it is clear that Government Exhibit 1210A was lawfully intercepted.

First, Government Exhibit 1210A was intercepted on November 10, 2002, well within the time period of FISC-authorized electronic surveillance of [abuobaidah@hotmail.com](mailto:abuobaidah@hotmail.com). See Ex. A; Gov. Ex. 1400 (trial exhibit listing the dates of FISC-authorized electronic surveillance and the specific monitored facilities).

Second, this Court has already determined that the FISA applications regarding electronic surveillance of defendant Fariz established probable cause to believe that the email address, [abuobaidah@hotmail.com](mailto:abuobaidah@hotmail.com), was being used, or was about to be used, by defendant Fariz. The United States specifically discussed the facts contained in the pertinent FISA applications that established such probable cause on pages 73-74 of the Government's Classified Memorandum Regarding the Disclosure of FISA Applications, Orders and Related Materials and the Authorization and Conduct of the FISA Electronic

Surveillances, submitted to the Court on January 10, 2005 for *in camera* and *ex parte* review. The Court, following a careful review of the briefs and pertinent FISA applications, held that the various FISA electronic surveillances of defendant Fariz were lawfully authorized and conducted. See Doc. 968.

For these reasons, there is no basis for suppressing Government Exhibit 1210A.

**III. Defendant Fariz Was Put On Notice Far In Advance Of Trial That Computer Communications Were Intercepted During FISC-Authorized Electronic Surveillance.**

To the extent that defendant Fariz asserts that the Court should suppress Government Exhibit 1210A because he has “no record or recollection of being specifically noticed that the source of any emails was FISA, until September 16, 2005,” his claim is completely disingenuous and should be denied. See Doc. 1361 ¶ 4. Defendant Fariz has been on notice that computer communications, including Government Exhibit 1210A, were intercepted through FISC-authorized electronic surveillance since at least April 12, 2004.

On April 12, 2004, a disc identified for discovery purposes as “1d8” was produced to defendant Fariz as part of the discovery process of the FISA intercepts. See Exhibit B (Letter from Terry A Zitek to Kevin T. Beck, dated Apr. 12, 2004). Disc “1d8” contained Government Exhibit 1210A. The cover letter accompanying the production of Disc “1d8” specifically stated:

Pursuant to the district court’s Discovery Order, enclosed please find 11 CDs. . . . **The intercepts on these CDs include email.**

See Ex. B (emphasis added). Moreover, on June 30, 2004, defendant Fariz was specifically told:

You are reminded that the universe of communications intercepted by the Tampa Office of the Federal Bureau of Investigation against defendants Al-Arian, Hammoudeh, Fariz and Shallah, all targeted pursuant to 50 U.S.C. § 1805, have been declassified and produced in discovery. **As previously explained, this production includes all oral and all pertinent written communications and all computer communications.**

See Exhibit C (Letter from Terry A. Zitek to Kevin T. Beck, dated June 30, 2004) (emphasis added). Thus, early in the discovery process, the United States informed defendant Fariz in writing that computer communications were intercepted during the FISC-authorized electronic surveillance. Defendant Fariz also was put on notice that Government Exhibit 1210A was an intercepted e-mail communication.

Even if defendant Fariz somehow failed to understand from these early discovery letters that computer communications were intercepted through FISC-authorized electronic surveillance, he should have understood it at the very latest by July 11, 2005, when Government Exhibit 1400 was admitted into evidence at trial. Government Exhibit 1400 lists [abuobaidah@hotmail.com](mailto:abuobaidah@hotmail.com) as one of the facilities monitored pursuant to a FISC order targeting defendant Fariz. Thus, defendant Fariz's claim of ignorance regarding the interception of communications is unsupported by the facts and, in any event, cannot justify suppression of Government Exhibit 1210A.

**IV. All Of The Communications Intercepted Through FISC-Authorized Electronic Surveillance That The United States Possesses Have Already Been Produced To Defendant Fariz.**

Last, defendant Fariz asks the Court to “compel the government to produce to the defense the fruits of all FISA surveillance in this case that it has not already produced.” See Doc. 1361 at 1,4. As we have repeatedly informed defendant Fariz, we have produced “the universe of communications” intercepted pursuant to FISA that the United States has. See e.g. Ex. C. Thus, this request should be denied as moot.

## **CONCLUSION**

For all the foregoing reasons, defendant Fariz's motion should be denied.

Respectfully submitted,

PAUL I. PEREZ  
United States Attorney

By: /s Terry A. Zitek  
Terry A. Zitek  
Executive Assistant U. S. Attorney  
Florida Bar No. 0336531  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602  
Telephone: (813) 274-6336  
Facsimile: (813) 274-6108  
E-mail: terry.zitek@usdoj.gov

By: /s Alexis L. Collins  
Alexis L. Collins  
Trial Attorney, U.S. Department of Justice  
United States Attorney No. 089  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602  
Telephone: (813) 274-6130  
Facsimile: (813) 274-6108  
E-mail: Alexis.Collins3@usdoj.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on September 30, 2005, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Kevin T. Beck  
Stephen N. Bernstein  
M. Allison Guagliardo  
Bruce G. Howie  
William B. Moffitt  
Linda G. Moreno  
Wadie E. Said

/s/ Terry A. Zitek

Terry A. Zitek  
Executive Assistant U. S. Attorney  
Florida Bar No. 0336531  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602  
Telephone: (813) 274-6000  
Facsimile: (813) 274-6108  
E-mail: terry.zitek@usdoj.gov

/s/ Alexis L. Collins

Alexis L. Collins  
Trial Attorney, U.S. Department of Justice  
United States Attorney No. 089  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602  
Telephone: (813) 274-6130  
Facsimile: (813) 274-6108  
E-mail: Alexis.Collins3@usdoj.gov